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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,190	01/23/2004	Peter Fyler Lynch	9495	8071
27752 7590 09/30/2009 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
QUINN, COLLEEN M				
ART UNIT		PAPER NUMBER		
3634				
MAIL DATE		DELIVERY MODE		
09/30/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/764,190

**Applicant(s)**

LYNCH, PETER FYLER

**Examiner**

COLLEEN M. QUINN

**Art Unit**

3634

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-12 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-12, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date \_\_\_\_\_
- 6) ☐ Other: \_\_\_\_\_
- 7) ☐ Notices of Informal Patent Application
- 8) ☐ Paper No(s)/Mail Date 8/18/09

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 18<sup>th</sup>, 2009 has been entered.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lateral support member resting downwardly upon the vertical support members must be shown or the feature(s) canceled from the claim(s). Currently, there are no clear limits of the different members' end so it is not clear which members are supporting others and which members are being supported. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The amendment filed August 18<sup>th</sup>, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: claims 1 and 19 now claim the lateral support member to be "resting downwardly upon and vertically compressing said first and second vertical support members, ". There is no support for this claim language in the applicant's original disclosure, and so it is considered new matter. *Applicant is required to cancel the new matter in the reply to this Office Action.*

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4-12 and 17-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Currently it is unclear how the *lateral support member's length rests downwardly upon the first and second vertical support member's since this is not shown in the drawings or clearly explained in the specification (there are no clear limits of the different members' end so it is not clear which members are supporting others and which members are being supported).*

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 7-9, 11, 12, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niece (US 4,023,682) in view of Ingelson (US 2,747,959). Niece discloses a shelf display apparatus for storing packages (figure 1), said apparatus comprising: a shelf having at least one shelf surface member (22, 22', 24) lying along a substantially horizontal plane (figure 1 ) and having a plurality of engageable features (spaces between members 24) along the surface (figure 1); a first vertical support

member (14) having a first lower end, wherein said first lower end is engageable to the shelf surface member at a first engagement feature location (figure 1 ) within the horizontal plane (figure 1) such that movement of the of the first lower end is blocked in at least one direction as a result of the engagement between the first lower end and the first of the engageable features (col. 1, lines 59-64; col. 2, lines 6-12 and col. 2, line 62- col. 3, line15) ; a second vertical support member (14) having a second lower end, wherein said second lower end is engageable to the shelf surface member at a second engagement feature location (figure 1) within the horizontal plane such that movement of the of the second lower end is blocked in at least one direction as a result of the engagement between the second lower end and the second of the engageable features (col. 1, lines 59-64; col. 2, lines 6-12 and col. 2, line 62- col. 3, line15) ; wherein said first and second engagement feature locations are spaced apart from each other along a first line in the horizontal plane (figure 1), the movement of the first and second lower ends relative to the shelf surface member in a direction perpendicular to the first line being blocked (col. 1, lines 59-64; col. 2, lines 6-12 and col. 2, line 62- col. 3, line15); and a lateral support member (12) having first and second lateral support member ends (opposite ends of 12) and a length therebetween; the first and second lateral support member ends being joined to the first and second vertical members respectively (figure 1), wherein the lateral support member, said first vertical support member and said second vertical support member together provide structural support for storing packages in a substantially vertical orientation on a shelf (figure 1 ) ; wherein the apparatus further comprises first (16, 18) and second (16,18) fastening mechanisms,

said first and second fastening mechanisms being joined to said first and second lower ends of said first and second vertical support members respectively (figure 1), each fastening mechanism connectable to a shelf in the first plane (figures 1 & 2), and wherein each fastening mechanism is a U-shaped bracket/engaging member that extends through an engageable feature/receiving area (engageable features/slots between 24) of the horizontal plane (figures 1 & 2) that is capable of providing display of product information. Niece fails to disclose the top horizontal member to comprise a continuously non-linear portion.

However, Ingelson discloses a shelf display apparatus (figure 1 & 3) for storing packages on a shelf (column 1, lines 15-19) comprising an item support/shelf divider (2) having first and second vertical ends and a top surface extending between the two vertical ends (figures 1 & 3), the ends of the item support/shelf divider being connectable (6) to the horizontal plane of the shelf (C) at the ends of the support/divider (figure 1) wherein the top surface of the item/support/shelf divider member has a continuous non-linear curved portion (figure 4) extending the entire length of the top support member between the first and second ends (figure 1) creating a rigid and easily formed partition that divides and supports merchandise packages on the shelf between the assembled members.

Therefore, it would have been obvious to one of ordinary skill in the art to construct the divider of Niece with a curved lateral member, as Ingelson suggests by teaching the curved divider element, since at the time of the invention, one of ordinary skill in the art would have good reason to pursue the known options within his or her

technical grasp, as the selected option was one of a finite number of available shapes and designs for divider elements. Such a combination, to one of ordinary skill in the art, would have a reasonable expectation of success, and would be based on ordinary skill and common sense at the time the invention was made.

Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niece and Ingelson as applied to claims 1, 4, 5, 7-9, 11, 12, 17 and 18 above, and further in view of Heroy (US 3,669,278). Neither Niece nor Harris disclose a fastening mechanism including a plate with a fastener that extends through a shelf in the first plane.

However, Heroy teaches a shelf display apparatus (figure 1 ) for supporting articles, the apparatus comprising connected and spaced apart vertical members (14) connected to a shelf via fastening mechanisms (figures 1 and 4-6) at the bottom of the spaced apart vertical members, the fastening mechanisms comprising a bottom plate (16) and at least one fastener (24) wherein the bottom plate is connectable to the shelf (figure 1) and the fastener can securely join the plate to the shelf (figure 3), providing an easily deployed fastening means.

Therefore it would have been obvious to one of ordinary skill in the art to provide the apparatus of Niece with a plate and fastener in the first plane as taught by Heroy in order to provide a flat fastening means along the shelf surface that readily secures and



comprises an easily operated fastening mechanism for attaching the vertical members to the fastening locations on the horizontal shelf plane.

### ***Allowable Subject Matter***

Claim 19 is objected to for including new and unsupported matter, but would be allowable if rewritten to overcome the above objection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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